Supreme Court, U.S.
FILED
OCT 18 1998
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(2)

No. 98-1237

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

ABD EL-HAMID A. EL-FADLY,

Petitioner

v

CITY OF LOS ANGELES, ET AL.,

Respondent

On Supplemental Appendix To The Petition For
A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

SUPPLEMENTAL APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

A. EL-FADLY
Petitioner in Pro Per
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12pp

APPENDIX D

FILED
JUL 31 1996
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY "S/JW" DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
AUG - 2 1996
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ABD EL-HAMID A. EL-FADLEY, Plaintiff vs. CITY OF LOS ANGELES; DEPT. OF PUBLIC WORKS; BUREAU OF ENGINEERING	CASE NOS. CV91-3301 KMW(SHx) CV92-6415 KMW(SHx)

After consideration of the papers in support of and in opposition to plaintiff's motion for summary judgment and the oral argument of counsel, the Court makes the following findings of fact and conclusions of law: THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

UNCONTROVERTED FACTS

1. Plaintiff started to work with [the] City of Los Angeles in December 1979, in the Public Works Department, Bureau of Engineering, in the Valley District office. "In 1981 he transferred to Wastewater Systems Engineering Division...downtown. Plaintiff was working the WSED in the Major Sewers Section until April 1990." (Plaintiff's Pretrial Conference statement, Page 5, Lines 4-9.)

2. On August 10, 1990, plaintiff filed a discrimination complaint alleging discrimination on the basis of religion, national origin and retaliation. On December 18, 1990, the EEOC made a "no cause" finding against the plaintiff and, on April 4, 1991, dismissed his complaint. (Plaintiff's Amended Complaint Exhs. H, I and K, Case No. CV 91-3301.)

3. On January 25, 1991, plaintiff filed a new complaint alleging essentially the same grounds. On August 4, 1992, the EEOC

again made a "no cause" finding against him and dismissed his complaint. (Plaintiff's Complaint, Exh. F, Case No. CV 92-6415; Plaintiff's Complaint, Exh. G, Case No. CV 92-6415.) Plaintiff's previous two complaints to the EEOC, alleging essentially the same claims, were determined by Civil Service Commissioners to lack sufficient evidence of discrimination on May 10, 1991, and March 27, 1992. (Defendant's Motion, Exh. I.)

4. Plaintiff received a negative yearly evaluation in April of 1986, which stated that Hamid is only "slowly reaching the productivity expected of him in his classification...[and that] [d]uring the past year Hamid has often been absent from work". This evaluation occurred before plaintiff ever filed a complaint with the EEOC for discrimination. (Plaintiff's Opposition, Exh. G, I.)

5. Plaintiff was required to attend a counseling session with his supervisors after receiving this negative evaluation in order

to work on plaintiff's improvement. (Plaintiff's Opposition to Motion for Summary Judgment, Exhs. G, I.)

6. Plaintiff's interview scores during the 1985 to 1991 period were lower than those of his competitors for promotions, and the panelists who interviewed him during the April to November 1990 period evaluated him as less qualified than his competitors. (Declaration of Frank G. Hodges, Jr. at ¶ 3; Plaintiff's Amended Complaint, Exh. I, Page 37, ¶ 4, and Page 38, ¶¶ 1 and 2, Exh. K, page 45, ¶ 2, Case No. 19-3301; Plaintiff's Complaint, Exh. G, Page 21, ¶¶ 4 and 5, Case No. CV 92-6415.)

7. Plaintiff's promotion applications were often incomplete or inadequate when compared to those submitted by the successful candidates. (Hodges Decl., ¶¶ 2, 3.)

8. Plaintiff was not promoted to Civil Engineering Assistant III or C.E. Associate I because he was not as qualified as the successful candidates. (Hodges Decl.,

¶¶ 2, 3.)

9. The record contains no evidence that the defendant's decision not to promote plaintiff because he was less qualified was a pretext for discrimination.

10. Plaintiff received poor evaluations and productivity reports on a number of occasions. (Amended Complaint (CV 91-3301), Exh. E at 30, Exh. N at 49; Defendant's Motion for Summary Judgment, Exh. L.)

11. Plaintiff was not assigned to certain major work projects because of his poor work performance and evaluations, and his refusal to perform additional assignments.

12. Plaintiff was denied certain requests for sick time and certain requests to work on his "off" days because he failed to comply with departmental policy. (Mohr Decl., ¶¶ 5, 7, 8; Hodges Decl., ¶ 7.)

13. Plaintiff did not suffer any adverse employment decisions.

14. Plaintiff was not required to work

under unreasonable time conditions or perform assignments inconsistent with his duties.

15. Defendant's poor evaluation of plaintiff and criticism of his work performance was not causally linked to the filing of plaintiff's discrimination claim.

CONCLUSIONS OF LAW

16. Plaintiff has failed to establish a prima facie case of discrimination based on religion or national origin, pursuant to *McDonnel Douglas Corp. v. Green*, 411 U.S. 792 (1973), because he has not shown that he was qualified for each of the positions for which he applied, and that, after he was rejected, the positions remained open and the City continued to seek applications from persons with complainant's qualifications.

17. Even if plaintiff had established a prima facie case of discrimination, defendant has rebutted this presumption by providing legitimate nondiscriminatory reasons for the alleged actions against the plaintiff. McDonnel Douglas, 411 U.S. at

802.

18. "In response to the defendant's offer of non-discriminatory reasons, the plaintiff must produce 'specific, substantial evidence of pretext.'" Wallis v. J.R. Simplot Co., 26 F.3d 885, 890 (9th Cir. 1994), quoting Steckl v. Motorola, Inc., 703 F.2d 392, 393 (9th Cir. 1983).

19. Plaintiff has failed to provide any evidence that defendant's legitimate nondiscriminatory reasons for its failure to promote him, assign him work, etc. were a pretext for discrimination and were not the actual reasons for their actions.

20. Plaintiff has not provided any evidence that his national origin or religion played a role in the decision-making processes which led to the alleged actions of which plaintiff complains.

21. Plaintiff has failed to establish a prima facie case of retaliation based upon his filing of a discrimination complaint because he has failed to show that he

suffered any adverse employment decisions, or that there was a causal link between any alleged adverse employment decision and his discrimination complaint. E.E.O.C. v. Hacienda Hotel, 881 F.2d 1504, 1514 (9th Cir. 1989).

22. Even if plaintiff had established a prima facie case of retaliation, defendant has rebutted this presumption by providing legitimate nondiscriminatory reasons for the alleged adverse employment decisions.

23. Plaintiff has failed to put forth any evidence that defendant's "proffered reasons are pretexts for retaliation or that discriminatory reasons more likely motivated the employer's action." Hacienda Hotel, 881 F.2d at 1514.

24. Defendant is entitled to costs.

25. Summary judgment shall be entered in defendant's favor consistent herewith as to both consolidated actions filed by plaintiff (CV 91-3301 KMW; CV 92-6415 KMW).

DATED: July 30, 1996

"S/Kim M. Wardlaw"
KIM McLANE WARDLAW
United States
District Judge

APPENDIX E

Editing the Plaintiff's Memoranda

Introduction: This editing is made for Plaintiff's Memorandum and Amended Memorandum in opposition to motion for Summary Judgment which were submitted to the District Court for the hearings of July 15, 1996, and July 22, 1996 respectively. Plaintiff could not do that editing before he submitted both of his Memorandum, and Amended Memorandum to the District Court because he did not have enough time for filing those memoranda. Plaintiff did this editing, to make it easy

to understand, for anyone who wants to read those memoranda.

The Editing:

A. The editing for Plaintiff's Memorandum Of Points And Authorities In Opposition To Motion For Summary Judgment . . . etc., which was submitted to the District Court for the hearing of July 15, 1996, is as follows:

Page 12 line 11:

Read; ----, at page __).

Should read; ----, at page 21).

Page 12 line 15:

Read; at page __).

Should read; at page 27).

Page 14 line 12:

Read; page __).

Should read; page 31).

Page 14 line 25:

Read; at page __).

Should read; at page 32).

Page 15 line 17:

Read; ----, at page __).

Should read; ----, at page 34).

Page 15 line 28:

Read ---- at page __).

Should read; ---- at page 38).

Page 16 line 9:

Read; _____).

Should read; 39 and 40).

B. The editing for Plaintiff's Amended Memorandum Of Points And Authorities In Opposition To Motion For Summary Judgment . . . etc., which was submitted to the District Court for the hearing of July 22, 1996, is as follows:

Page 31 line 15:

Read; ---- page 29):

Should read; ---- page 31):

Page 32 line 4:

Read; ---- page 30):

Should read; ---- page 31):